Crest Ambulance Service, Inc. and Assist Transportation Service, Inc. *and* Local 531, International Brotherhood of Teamsters, AFL–CIO. Cases 29–CA–19181, 29–CA–19371, and 29–CA–19439

January 31, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

Upon charges filed by the Union on May 15, July 24, and August 23, 1995, the General Counsel of the National Labor Relations Board issued an amended consolidated complaint (complaint) on August 25, 1995, against Crest Ambulance Service, Inc. and Assist Transportation Service, Inc., an alleged single employer (the Respondent), alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On October 2, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On October 3, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On October 17, 1995, Charles Medina, the Respondent's operations manager, filed a response.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the amended consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the amended consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 11, 1995, notified the Respondent that an answer to the complaint was required and that unless an answer was received by close of business on September 15, 1995, a Motion for Summary Judgment would be filed. No answer was filed.

In response to the Board's Notice to Show Cause, Charles Medina, the Respondent's operations manager, wrote a letter to the Board, dated October 16, 1995, in which he denies all the allegations in the complaint involving his alleged misconduct.[1] Further, he specifically comments on some of the complaint allegations concerning the Respondent's alleged unlawful conduct with respect to employees Pedro Lopez, James Holmes, and Michael Delugo. The letter does not, however, address the Respondent's failure to file a timely answer to the complaint.[2]

Medina's attack on the complaint's factual allegations, while appropriate in a timely answer, simply came too late when included for the first time in a response to the Notice to Show Cause. *Tri-County Commercial Laundry*, 309 NLRB 735 (1992). The Board's Rules provide that all allegations of the complaint shall be deemed admitted unless good cause is shown why the failure to file an answer within the allotted period should be excused. Here, the Respondent's failure to file a timely answer has not been supported by a showing of good cause and we therefore decline to accept the October 16, 1995 letter as a timely answer to the amended consolidated complaint.

In the absence of good cause for the Respondent's failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times Crest Ambulance Service, Inc. (Crest), a New York corporation with its principal office and place of business located at 6205 9th Avenue, Brooklyn, New York, and another place of business at 4414 Arthur Kill Road, Staten Island, New York, has been engaged in the provision of ambulance services. At all material times Assist Transportation Service, Inc. (Assist), a New York corporation with its principal office and place of business located at Crest's Brooklyn facility, and another place of business located at Crest's Staten Island facility, has been engaged in the provision of ambulette services. At all material times, Crest and Assist have been affiliated business enterprises with common officers, ownership, directors, management, and supervision, have formulated and administered common labor policy, have shared common premises and facilities, and have held themselves out to the public as a single-integrated business enterprise, the Respondent. During the 12-month period prior to the issuance of the amended consolidated complaint, a representative period, the Respondent has, in the course and conduct of its business, purchased and received at its Brooklyn facility goods, materials, and supplies valued in excess of $50,000 directly from points located outside the State of New York. The Respondent is now, and has been at all material times, a single employer engaged in commerce within the

[1] Although Medina's letter does not specifically so state, we are treating the letter as filed on behalf of the Respondent.

[2] Medina does state that he gave a statement to Board Agent Sandra Rattner. It is not clear whether this is offered as an explanation as to why the Respondent failed to respond to the complaint. In any case, we find that it does not constitute a sufficient explanation for the Respondent's failure to file a timely answer. *Wheeler Mfg. Corp.*, 296 NLRB 6 (1989).

meaning of Section 2(2), (6), and (7) of the Act, and Crest and Assist are each now individually, and have been at all material times, engaged in commerce within the meaning of the Act. The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About April 24, 1995, the Respondent interrogated its employees about their membership in, support for, and activities on behalf of the Union. About April 28, 1995, the Respondent interrogated its employees about membership in, support for, and activities on behalf of the Union, informed its employees it would be futile for them to select the Union as their bargaining representative, threatened its employees with assignment to vehicles in the worst condition because of their membership in, support for, and activities on behalf of the Union, threatened its employees with discharge because of their membership in, support for, and activities on behalf of the Union, promised its employees job security if they abandoned their support for the Union, conditioned its employees' job retention on voting ''no'' against the Union in the NLRB election to be conducted on May 26, 1995, created the impression among its employees that their union activities were under surveillance by the Respondent, and solicited employees' complaints and grievances, thereby promising its employees increased benefits and improved terms of employment if they abandoned their support for the Union.

On a date in the last week of April 1995, the Respondent threatened its employees with discharge because of their membership in, support for, and activities on behalf of the Union, interrogated its employees about their membership in, support for, and activities on behalf of the Union, and threatened its employees with discharge if they refused to sign a letter renouncing their support for the Union.

On numerous dates between April 28 and May 5, 1995, the Respondent solicited its employees to renounce their support for the Union, threatened its employees with harassment and discharge because of their membership in, support for, and activities on behalf of the Union, and informed its employees that it would be futile for them to select the Union as their bargaining representative.

On a date in April 1995, the Respondent interrogated its employees about their membership in, support for, and activities on behalf of the Union, interrogated its employees about other employees' membership in, support for, and activities on behalf of the Union, threatened its employees with discharge because of their membership in, support for, and activities on behalf of the Union, created an impression among its employees that their union activities were under surveillance by the Respondent, and threatened its employees with plant shutdown because of their membership in, support for, and activities on behalf of the Union.

About May 1, 1995, the Respondent coercively polled its employees to ascertain their support for the Union, promised its employees a wage increase if they abandoned their support for the Union, promised its employees improved medical benefits if they abandoned their support for the Union, solicited its employees to renounce their support, in writing, for the Union, and threatened its employees with discharge because of their membership in, support for, and activities on behalf of the Union.

About May 3, 1995, the Respondent threatened its employees with discharge because of their membership in, support for, and activities on behalf of the Union and created the impression among its employees that their union activities were under surveillance by the Respondent.

On a date in the first week of May 1995, the Respondent interrogated employees in the presence of other employees concerning their membership in, support for, and activities on behalf of the Union.

On two consecutive dates in May 1995, the Respondent informed its employees that their presence at a union meeting would be under surveillance by the Respondent and created the impression among its employees that their presence at a union meeting was under surveillance by the Respondent.

About May 9, 1995, the Respondent threatened its employees with discharge if they spoke to other employees about the Union.

On a date in the third week of May 1995, the Respondent created an impression among its employees that their union activities and support for the Union were under surveillance by the Respondent, interrogated its employees about their membership in, support for, and activities on behalf of the Union, promised employees improved medical benefits if they abandoned their support for the Union, and threatened its employees with plant shutdown and relocation because of their membership in, support for, and activities on behalf of the Union.

About May 24, 1995, the Respondent promised employees a ride to the NLRB election on May 26, 1995, if they voted ''no'' against the Union, and on May 26, 1995, the Respondent granted employees a ride to the NLRB election on May 26, 1995, because they had promised to vote ''no'' against the Union.

About May 26, 1995, the Respondent threatened employees with discharge because of their membership in, support for, and activities on behalf of the Union.

On a date in the last week of April 1995, the Respondent reduced the paid workweek of its employees, James Holmes and Michael Delugo, from 5 to 4 days. About May 1 and 2, 1995, the Respondent suspended its employee, Pedro Lopez. About May 5, 1995, the

Respondent changed the start time of its employee, Harold Whetstone, in order to isolate him from other employees, and because of his membership in, support for, and activities on behalf of the Union, and failed and refused to assign Whetstone a helper to assist him in performing his duties on his newly assigned shift. About May 9, 1995, the Respondent discharged its employee Pedro Lopez. About May 26, 1995, the Respondent discharged Harold Whetstone. About July 16, 1995, the Respondent discharged its employees, James Holmes and Michael Delugo. Since about the dates of their schedule reductions and/or discharges, the Respondent has failed and refused to recall or reinstate, or offer to recall or reinstate, its employees Lopez, Whetstone, Holmes, and Delugo, to their former schedules and/or positions of employment. The Respondent engaged in this conduct because its employees, Lopez, Whetstone, Holmes, and Delugo, joined, supported and assisted the Union, and engaged in concerted activities, and to discourage its employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. By reducing the paid workweek of James Holmes and Michael Delugo, suspending Pedro Lopez, changing the start time of, and refusing to assign a helper to Harold Whetstone, and discharging and failing and refusing to recall, reinstate, or offer to recall or reinstate Lopez, Whetstone, Holmes, and Delugo, the Respondent has also been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) by reducing the paid workweek of James Holmes and Michael Delugo, and changing the start time of, and refusing to assign a helper to, Harold Whetstone, we shall order the Respondent to rescind these changes and make these employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondent has also violated Section 8(a)(3) and (1) by suspending Lopez and discharging and failing to reinstate Lopez, Whetstone, Holmes, and Delugo, we shall order the Respondent to offer the discriminatees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra. The Respondent shall also be required to expunge from its files any and all references to the unlawful suspension and discharges, and to notify the discriminatees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Crest Ambulance Service, Inc. and Assist Transportation Service, Inc., a single employer, Staten Island and Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees about their or other employees' membership in, support for, or activities on behalf of the Union.

(b) Informing its employees it would be futile for them to select the Union as their bargaining representative.

(c) Threatening its employees with assignment to vehicles in the worst condition, because of their membership in, support for, or activities on behalf of the Union.

(d) Threatening its employees with harassment or discharge because of their membership in, support for, or activities on behalf of the Union or because they refuse to sign a letter renouncing their support for the Union.

(e) Promising its employees job security, a wage increase, or improved medical benefits if they abandon their support for the Union.

(f) Conditioning its employees' job retention on voting ''no'' against the Union in an NLRB election.

(g) Informing employees or creating the impression among its employees that their union activities or support for the Union are under surveillance.

(h) Soliciting employees' complaints and grievances, thereby promising its employees increased benefits and improved terms if they abandon their support for the Union.

(i) Soliciting its employees to renounce their support for the Union.

(j) Threatening its employees with plant shutdown, or plant relocation because of their membership in, support for, or activities on behalf of the Union.

(k) Coercively polling its employees to ascertain their support for the Union.

(l) Soliciting its employees to renounce their support, in writing, for the Union.

(m) Promising or granting employees a ride to an NLRB election if they vote ''no'' or promise to vote ''no'' against the Union.

(n) Reducing the paid workweek of its employees, suspending its employees, changing the start time of its employees in order to isolate them from other employees; failing or refusing to assign a helper to an employee; discharging its employees; or failing or refusing to recall or reinstate or offer to recall or reinstate, its employees to their former schedules and/or positions of employment, or both, because its employees join, support, or assist the Union, or engage in concerted activities, or to discourage its employees from engaging in these activities.

(o) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the changes to the paid workweek of James Holmes and Michael Delugo, and the start time of Harold Whetstone, and the refusal to assign a helper to Whetstone, and make Holmes, Delugo, and Whetstone whole for any loss of earnings attributable to its unlawful conduct in the manner set forth in the remedy section of this decision.

(b) Offer Pedro Lopez, Harold Whetstone, James Holmes, and Michael Delugo immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision.

(c) Remove from its files any and all references to the unlawful suspension and discharges, and notify the discriminatees in writing that this has been done.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facilities in Staten Island and Brooklyn, New York, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT interrogate our employees about their or other employees' membership in, support for, or activities on behalf of Local 531, International Brotherhood of Teamsters, AFL-CIO.

WE WILL NOT inform our employees it would be futile for them to select the Union as their bargaining representative.

WE WILL NOT threaten our employees with assignment to vehicles in the worst condition because of their membership in, support for, or activities on behalf of the Union.

WE WILL NOT threaten our employees with harassment or discharge because of their membership in, support for, or activities on behalf of the Union or because they refuse to sign a letter renouncing their support for the Union.

WE WILL NOT promise our employees job security, a wage increase, or improved medical benefits if they abandon their support for the Union.

WE WILL NOT condition our employees' job retention on voting ''no'' against the Union in an NLRB election.

WE WILL NOT inform employees or create the impression among our employees that their union activities or support for the Union are under surveillance.

WE WILL NOT solicit employees' complaints and grievances, thereby promising our employees increased benefits and improved terms of employment if they abandon their support for the Union.

WE WILL NOT solicit our employees to renounce their support for the Union.

WE WILL NOT threaten our employees with plant shutdown or plant relocation because of their membership in, support for, or activities on behalf of the Union.

WE WILL NOT coercively poll our employees to ascertain their support for the Union.

WE WILL NOT solicit our employees to renounce their support, in writing, for the Union.

WE WILL NOT promise or grant employees a ride to an NLRB election if they vote ''no'' or promise to vote ''no'' against the Union.

WE WILL NOT reduce the paid workweek of our employees, suspend our employees, change the start time of our employees in order to isolate them from other employees; fail or refuse to assign an employee a helper; discharge our employees; or fail or refuse to recall or reinstate, or offer to recall or reinstate, our employees to their former schedules and/or positions of employment because our employees join, support, or assist Local 531, International Brotherhood of Teamsters, AFL–CIO, or engage in concerted activities, or to discourage our employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the changes to the paid workweek of James Holmes and Michael Delugo, to the start time of Harold Whetstone, and the refusal to assign a helper to Whetstone, and WE WILL make Holmes, Delugo, and Whetstone whole for any loss of earnings attributable to our unlawful conduct in the manner set forth in a decision of the National Labor Relations Board.

WE WILL offer Pedro Lopez, Harold Whetstone, James Holmes, and Michael Delugo immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in a decision of the National Labor Relations Board.

WE WILL remove from our files any and all references to the unlawful suspension and discharges, and WE WILL notify the discriminatees in writing that this has been done.

CREST AMBULANCE SERVICE, INC. AND ASSIST TRANSPORTATION SERVICE, INC.